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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
JORGE MAGANA-ALVARADO,
Defendant.

No. CR 07-0379 SI

**UNITED STATES' SENTENCING
MEMORANDUM**

Sentencing Date: August 22, 2008

INTRODUCTION

Having entered an open plea, Defendant Jorge Magana-Alvarado stands convicted of one count of Alien Found in the United States After Deportation, in violation of 8 U.S.C. § 1326. The government hereby files this brief Sentencing Memorandum respectfully requesting that the Court impose a sentence of 18 months, in the middle of the applicable Guideline range.

ARGUMENT

As the Court is well aware, the Sentencing Guidelines are no longer binding in the wake of the Supreme Court's decision in *Booker*. Rather, this Court is to consider the Guidelines

1 along with the other factors set forth in 18 U.S.C. § 3553(a) to fashion a sentence that is
 2 sufficient, but no harsher than necessary, to comply with the purposes of sentencing. As set forth
 3 in *United States v. Mix*, 457 F.3d 906, 911 (9th Cir. 2006), the District Court must correctly
 4 analyze the Guidelines and then take into account the factors set forth in § 3553. Under *United*
 5 *States v. Gall*, 128 S.Ct. 586 (2007), this Court should “consider all of the § 3553(a) factors to
 6 determine whether they support the sentence requested by” the parties. *Id.* at 596-97. “In so
 7 doing, [the Court] may not presume that the Guidelines range is reasonable,” but rather “must
 8 make an individualized assessment based on the facts presented.” *Id.* Analysis of the Guidelines
 9 and the § 3553 factors here demonstrates that an 18-month sentence in the middle of the
 10 Guideline range is a reasonable and appropriate one in this case and for this defendant.

11 A. Guidelines Range

12 The parties did not enter into a plea agreement. As the Probation Officer (“PO”) has
 13 determined in her final Presentence Report (“PSR”), the adjusted offense level in this case is 10
 14 and the Criminal History Category is IV. The applicable Guideline range is 15 to 21 months.
 15 The PO is recommending a sentence at the high end of the Guideline range, that is, a sentence of
 16 21 months’ imprisonment.

17 B. Recommended Sentence

18 The government recommends a sentence of 18 months of imprisonment.

19 C. Booker Analysis

20 1. Nature and Circumstances of the Offense and the History and
 21 Characteristics of the Defendant.

22 As set forth in § 3553(a)(1), this Court should consider the nature and circumstances of
 23 the offense and the history and characteristics of the Defendant. The offense is a serious one
 24 because illegal aliens who persistently reenter this country (and, in the defendant’s case, commit
 25 crimes here) are quite costly to the government in terms of enforcement and harm to those
 26 affected by the crimes.

27 In addition, as noted by the PO, this defendant poses a greater risk than most illegal
 28 reentrants in that he has been involved with violent crime and he is a gang member. These

1 factors support a mid-range Guideline sentence.

- 2 2. The Need for the Sentence to Reflect the Seriousness of the Offense, to
3 Promote Respect for the Law, and to Provide Just Punishment.

4 As set forth in 18 U.S.C. § 3553(a)(2)(A), the Court must also consider the need for the
5 sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide
6 just punishment. This defendant has shown persistent disregard for the law, as demonstrated by
7 his prior deportations and his criminal record.

- 8 3. The Need To Afford Adequate Deterrence to Criminal Conduct.

9 Section 3553(a)(2)(B) requires this Court to take into account the need to provide
10 adequate deterrence to criminal conduct. Because this defendant has not been deterred by prior
11 deportations or by prior punishments for his crimes, a substantial sentence is needed to deter
12 further criminal conduct.

- 13 4. The Need to Protect the Public from Further Crimes of the Defendant.

14 Under section 3553(a)(2)(C), this Court should fashion a sentence that takes into account
15 the need to protect the public from further crimes. Because of the defendant's gang membership
16 and prior convictions involving violence and weapons, a substantial sentence is needed to protect
17 the public.

- 18 5. The Need To Provide the Defendant with Educational or Vocational
19 Training, Medical Care, or Other Correctional Treatment.

20 The government supports any available training or care that would help the defendant
21 become a non-violent and productive member of our global society when he is released from
22 prison and deported back to Mexico.

- 23 6. The Need to Avoid Unwarranted Sentencing Disparities Among
24 Defendants with Similar Records Who Have Been Found Guilty of Similar
25 Conduct.

26 As explained above, the government believes that the aggravating factors in this case
27 warrant a mid-range sentence. It is not often that the government sees someone as young as this
28 defendant who already has two prior deportations and is in Criminal History Category IV. Added
to that is the concern about his gang membership and his prior involvement with weapons and

1 violence. The government sincerely hopes that a mid-range sentence will impress upon the
2 defendant the importance of his building a new and non-violent life in his home country after his
3 release and deportation.

4 **CONCLUSION**

5 Consideration of all of the sentencing factors under § 3553(a) – particularly his gang
6 membership, history of violence, involvement with weapons, his being in Criminal History
7 Category IV at such a young age, and his two prior deportations – support a sentence at least in
8 the middle of the applicable Guideline range. It is hoped that upon release and deportation to
9 Mexico, the defendant will build a new, non-violent, and productive life in his home country.

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11 DATED: August 11, 2008

Respectfully submitted,

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13 United States Attorney

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15 /s/
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16 Assistant United States Attorney
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